



Commodity Levies (Blackcurrants) Order 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 23rd day of September 2013

Present:

Hon Bill English presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act.

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Order

1 Title

This order is the Commodity Levies (Blackcurrants) Order 2013.

2 Commencement

This order comes into force on 29 October 2013.

3 Interpretation

In this order, unless the context requires another meaning,—

Act means the Commodity Levies Act 1990

BCNZ means the industry organisation known on the commencement of this order as Blackcurrants NZ Incorporated

collection agent means a person whose business is or includes buying blackcurrants from growers

grower means a person whose business is or includes producing blackcurrants in New Zealand for commercial purposes

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means money paid under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on 29 October 2013 and ending on 30 September 2014;
- (b) for the final levy year, the period starting on 1 October 2018 and ending on 22 September 2019;
- (c) in every other case, a 1-year period starting on 1 October and ending on 30 September

mediator means a person appointed under clause 20 and, in relation to a dispute, the mediator appointed to resolve that dispute.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on blackcurrants that a grower produces in New Zealand for commercial purposes.
- (2) The levy is payable to BCNZ.

*Responsibility for payment of levy***5 Growers primarily responsible for paying levy**

- (1) Growers are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

6 Collection agents must pay levy and recover it from growers

- (1) A collection agent must pay the levy on blackcurrants that it buys from a grower.
- (2) A collection agent may recover the levy, and any GST paid in respect of it, from the grower by deducting the levy and GST from the amount otherwise payable to the grower for the blackcurrants.
- (3) A collection agent must not charge a collection fee for paying or recovering the levy.

*Determination of levy***7 Basis of calculation of levy**

- (1) The levy on blackcurrants is to be calculated on the basis of their weight in kilograms when sold by a grower to a collection agent.
- (2) The levy must be paid at a single rate.

8 Initial rate of levy

The rate of levy for the first levy year is set at 4 c/kg (excluding GST).

9 Later rates of levy

BCNZ may set the rate of levy for any levy year other than the first as long as—

- (a) the rate is set before the start of the levy year; and
- (b) the rate does not exceed the maximum rate of 6 c/kg (excluding GST); and
- (c) if the rate is greater than the rate for the previous levy year, the rate has been approved by growers at the last annual or special general meeting of BCNZ.

10 Previous rate of levy to apply

If the rate of levy is not set for a levy year in accordance with clause 9, then the most recently set rate of levy continues to apply for that levy year.

11 Notification of rate of levy

As soon as practicable after setting a rate of levy for any levy year, BCNZ must notify the rate—

- (a) in the *Gazette*; and
- (b) by its newsletter, to all growers and collection agents known to it.

*Payment of levy***12 Payment of levy**

- (1) BCNZ must invoice a collection agent at the end of each quarter for the levy payable on the blackcurrants that the collection agent sold during the quarter, excluding any levy included in a previous invoice under subclause (2).
- (2) The invoice for the quarter ending on 30 September in any levy year must include the levy payable on the blackcurrants that the collection agent did not sell during the levy year.
- (3) The levy—
 - (a) is due on the date that the invoice is issued; and
 - (b) must be paid on or before the 20th day of the month following the month in which the invoice is issued.

*Spending of levy money***13 BCNZ must spend levy money**

- (1) BCNZ must spend all levy money paid to it.
- (2) BCNZ must invest all levy money until it is spent.

14 Purposes for which levy money may be spent

- (1) BCNZ may spend levy money for purposes relating to blackcurrants, including the following:
 - (a) the breeding of new varieties:
 - (b) product research and development:
 - (c) market research and development:

- (d) the promotion of blackcurrants:
 - (e) quality assurance:
 - (f) the promotion of technology use:
 - (g) the day-to-day administration of BCNZ.
- (2) BCNZ must not spend any levy money on commercial or trading activities.

15 BCNZ must inform and consult growers about spending of levy money

- (1) BCNZ must, at its annual general meeting, inform growers of how it has spent levy money and consult growers on how it proposes to spend levy money.
- (2) BCNZ may, at any special general meeting, inform growers of how it has spent levy money and consult growers on how it proposes to spend levy money.

Record-keeping requirements and confidentiality of information

16 Records

- (1) A grower must, for each levy year, keep records of—
- (a) the name and address of each collection agent to whom the grower has sold blackcurrants; and
 - (b) the quantities sold to each collection agent.
- (2) A collection agent must, for each levy year, keep records of—
- (a) the name and address of each grower from whom blackcurrants were bought; and
 - (b) the quantities bought from each grower; and
 - (c) the amount of levy deducted in respect of each quantity; and
 - (d) the quantities of blackcurrants sold by the collection agent.
- (3) BCNZ must, for each levy year, keep records of—
- (a) each amount of levy money paid to it; and
 - (b) the person who paid each amount and the date on which it was received; and
 - (c) how the levy money was spent or invested.
- (4) The records required by this clause must be retained for at least 2 years from the end of the levy year to which they relate.

17 Confidentiality of information

- (1) No officer or employee of BCNZ, or any person involved in collecting levy money (such as a collection agent), may disclose (except to an officer or employee of BCNZ) any information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Act; or
 - (b) the production of any statement under section 25 of the Act; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Act; or
 - (d) the disclosure of information that is required by law.
- (3) Subclause (1) does not prevent BCNZ from—
 - (a) disclosing or using any information for statistical or research purposes, if the information is disclosed in a form that does not identify any person; or
 - (b) disclosing or using any information for the purposes of invoicing or collecting the levy; or
 - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

*Miscellaneous***18 Conscientious objectors**

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to BCNZ.

19 Remuneration of persons conducting compliance audits

A person appointed as auditor under section 15 of the Act must be remunerated by BCNZ at a rate determined by the Minister for Primary Industries after consultation with BCNZ.

*Mediation of disputes***20 Appointment of mediators**

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of the levy payable.
- (2) Any party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) On receiving the request, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends when—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 27.

21 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

22 Conference

A mediator may organise a conference to facilitate the resolution of the dispute between the parties.

23 Time and place of conference

Every conference organised by a mediator must be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

24 Conference to be held in private

- (1) Only the parties to a dispute and the mediator may attend a conference organised by the mediator.
- (2) However, a mediator may, if satisfied in all the circumstances that it is appropriate to do so, allow a representative of any party to a dispute to attend a conference.

25 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference organised by a mediator, may be heard at the conference.

26 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

27 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If the mediator resolves a dispute, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

28 Costs of mediation

Each party must pay the party's own costs in relation to the mediation.

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 27 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal—
 - (a) within 28 days after the decision is made; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) serve a copy of the notice of appeal on every other party to the dispute; and
 - (b) fix the time and place for the hearing of the appeal; and
 - (c) notify the appellant and the other parties to the dispute of the time and place for the hearing.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order imposes a levy on blackcurrants that a grower produces in New Zealand for commercial purposes. The levy is payable to Blackcurrants NZ Incorporated. The order comes into force on 29 October 2013. It replaces the Commodity Levies (Blackcurrants) Order 2007, which was deemed to be revoked at the end of 28 October 2013 (*see* section 13 of the Commodity Levies Act 1990 (the **Act**)).

This order will be deemed to be revoked at the end of 31 December 2014 unless it is confirmed by an Act passed on or before that day (*see* section 12 of the Act). If the order is confirmed, it will be deemed to be revoked at the end of 22 September 2019 unless it is revoked or extended before then (*see* section 13 of the Act).

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 26 September 2013.
This order is administered by the Ministry for Primary Industries.
